

2024:PHHC:170400



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-4035-2011 (O&M)
Date of Decision: December 18, 2024

Jatin and another

...Appellants

VERSUS

Subhash Chand and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.J.S.Cooner, Advocates for the appellants.

Respondents No.1 and 2 ex-parte.

Mr.Vijiyesh Malhotra and Mr.Sandeep Suri, Advocates
for respondent No.3-insurance company.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants, thereby, assailing the judgment of dismissal of the claim petition by learned Motor Accident Claims Tribunal, filed by the claimants, to seek compensation, on account of death of their mother Shashi, in a motor vehicular accident.

The facts germane, to be noticed, are as follows:-

That, on 06.08.2009, Smt.Shashi, was coming from Manimajra to Sector-6, Panchkula, on a rickshaw and when the said rickshaw reached near traffic light, Sector-6, Panchkula, a motorcycle bearing registration No.HR-03J-7365, being driven by respondent No.1-Subhash Chand, at a high speed and in rash and negligent manner, came from backside and struck against the rickshaw, as a result whereof, Shashi fell down on the road and received multiple severe injuries upon her person, apart from head injury. She was



firstly taken to General Hospital, Sector-6, Panchkula, from where, she was referred to PGI, Chandigarh. However, Shashi died on 08.08.2009, on account of the injuries sustained in the accident in question.

Even, FIR No.362 dated 08.08.2009 was got registered qua the accident in question. As such, the claimants filed the claim petition for seeking compensation of Rs.30 lakh, on account of death of their mother, in a motor vehicular accident.

In pursuance of the notice, respondents made appearance and filed their respective replies. Respondents No.1 and 2, in their reply, disputed about the maintainability of the petition and also that claimants have not come to the Court with clean hands. On merits, they denied about taking place of the accident and involvement of the motorcycle, driven by respondent No.1. Likewise, respondent No.3-insurance company, in its reply, had taken preliminary objection, thereby, disputing cause of action, locus standi and the driver of the motorcycle to be not holding driving licence, at the time of accident. On merits, the insurance company also denied taking place of the accident. Rather, the insurance company pleaded that the claim petition has been filed by the claimants, in collusion with respondents No.1 and 2.

After framing of the issues, to substantiate their claim, appellant-claimant No.1 Jatin had stepped into witness box as PW-1 and tendered into evidence, his affidavit Ex.PW1/A. He also tendered into evidence, copy of the FIR Ex.P1 and copy of post-mortem report Ex.P2. Even, Raj Kumar, brother of the deceased, had stepped into witness box as PW-2 and tendered his affidavit Ex.PW2/A. He also tendered into evidence



death certificate of Shashi Ex.P3. Thereafter, the evidence of the claimants was closed.

To rebut the claim of the claimants, learned counsel for the respondents No.1 and 2 tendered into evidence copy of driving licence Ex.R1, copy of RC Ex.R3, copy of insurance policy Ex.R3 and closed the evidence. Likewise, learned counsel for respondent No.3 tendered into evidence, copy of insurance policy Ex.R4 and closed the evidence.

On appraisal of the evidence, brought on record, learned Tribunal concluded about the claimants to have failed to prove about factum of accident and manner of taking place of the same and the version of rashness and negligence, on the part of respondent No.1-Subhash Chand and thus, the claim petition was dismissed.

Feeling aggrieved, the appellants-claimants have filed the present appeal.

Learned counsel for the parties heard.

At the very outset, learned counsel for the appellants has submitted that before learned Tribunal, the appellants-claimants were required to prove their case by preponderance of probabilities. Even though, no eye witness, as such, has been examined by the appellants-claimants, but however, taking place of the accident in question, stands amply established from the contents of the FIR, which has been proved as Ex.P1 and the factum of death also stands established from the recitals of the post-mortem report Ex.P2. It is submitted that the said FIR was got registered, at the instance of Guddu Kumar, the rickshaw puller and he has therein, stated about the manner of taking place of the accident, when the motorcycle was



struck by Subhash Chand, in a rash and negligent manner, on the backside of the rickshaw.

In the light of the same, it is submitted that it stands amply established that the accident had taken place and manner of the same, also is spelt out from the FIR, which is sufficient qua the enquiry, which is required to be conducted, in an accident claim case. Thus, it is submitted that learned Tribunal had erroneously reached the conclusion about the factum of accident and manner of taking place of the same, having not established and has erroneously, decided issue No.1 against the appellants-claimants and dismissed the claim petition.

Per contra, learned counsel representing the insurance company vehemently contends that the appellants-claimants neither proved the involvement of the motorcycle in the accident in question, nor proved the rashness and negligence on the part respondent No.1-Subhash Chand, in causing the accident in question. In fact, it is submitted that since the claim petition was filed under Section 166 of the Motor Vehicles Act, it was required, on the part of the appellants, to establish about rashness and negligence, on the part of driver of the alleged offending vehicle, but however, no sufficient evidence, to so substantiate, has been led. In fact, while making reference to the testimonies of both PW-1 Jatin and PW-2 Raj Kumar, it is submitted that both the said witnesses have categorically stated that they have not witnessed the accident.

Furthermore, it is submitted that FIR relied upon, singularly, is not sufficient to conclude about rashness and negligence, on the part of respondent No.1-Subhash Chand. In fact, learned counsel for respondent



No.3, while making reference to the recitals of the FIR, submitted that complete particulars of the author of the FIR are mentioned in the same, but no attempt has been made to examine the said author of the FIR, who could have straightened the things and depose about the manner of taking place of the accident.

In the light of the aforesaid submissions, at the very outset, it is pertinent to mention that in the eventuality of the persons knocking the door of the Court, by way of filing of the petition under Section 166 of the Act, then, it is incumbent upon the claimants to establish, rashness and negligence, on the part of driver of the offending vehicle. The proof of imputation of rashness and negligence, on the part of driver of offending vehicle, is a sine quo non, for sustaining the plea for grant of compensation, while assessing the loss of dependency etc.

In the case in hand, only two witnesses have been examined by the appellants-claimants. In fact, appellant-claimant No.1 himself stepped into witness box as PW-1 and further also examined PW-2 Raj Kumar, who is brother of deceased Shashi. Undisputedly, both the said witnesses were never accompanying the deceased and thus, never witnessed the accident in question. This fact, has been admitted by them in the cross-examination. Besides the aforesaid witnesses, FIR has been proved as Ex.P1 and post-mortem report Ex.P2. Though, much emphasis has been laid upon the FIR, but however, perusal of the FIR reveals that it was got registered at the instance of Guddu Kumar s/o Bhalle Saha, r/o Village Parbatta, PS Ismailpur, District Bhagalpur, Bihar. Since, the complete particulars of the author of the FIR, are spelt out in the FIR only, it was required on the part of



the appellants-claimants to have summoned said witness. Though, during the course of arguments, it is submitted that said Guddu Kumar was residing in Bihar, but however, from the FIR, it is evident that at the relevant time of recording of the FIR, he was residing in Manimajra, which is part of Chandigarh. Even then, no steps have been taken to examine the said witness. Besides the same, appellants-claimants, ought to have examined the Investigating Officer to know about the fate of the criminal case, but no such steps have been taken.

Such being the factual position, it is pertinent to mention that rule of evidence to prove the charges in a criminal trial, cannot be used, while deciding the petition under Section 166 of the Motor Vehicles Act, which is summary in nature. It is required on the part of the appellants-claimants, in the petition under Section 166, to lead evidence of it own, with regard to the factum of accident and to establish the rashness and negligence, on the part of the offending vehicle.

However, in the present case, no such satisfactory evidence has been led, which probablizes taking place of the accident, in the manner, as alleged and the involvement of the motorcycle bearing registration No.HR-03J-7365 as well as role assigned to respondent No.1-Subhash Chand.

In the given circumstances, learned Tribunal has correctly appraised the evidence and dismissed the claim petition. Hence, the present appeal is bereft of merits and the same is hereby dismissed.

December 18, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No